

May 9, 2016

Via Email

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Donna Rawls, Paralegal
999 E Street, NW
Washington, DC 20436
drawls@fec.gov
jjordan@fec.gov

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RE: MUR 7041—WRITTEN DEMONSTRATION OF NO ACTION TO BE TAKEN

Torres Law Group, PLLC represents the Respondents in MUR 7041 as indicated in the enclosed Statements of Designation of Counsel. This writing responds to allegations the Commission forwarded to Respondents by letter dated April 20, 2016 and received by Respondents on April 25, 2016. By this letter, Respondents assert that no action should be taken against them in this matter:

RESPONSE TO COMPLAINT

The complaint repeats its allegations in several sections devoted to particular Respondents. This response addresses each allegation; however, for the sake of clarity, it begins by responding in detail to each alleged violation as they would apply to any of the Respondents.

United Association Local 469 operates a separate segregated fund financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers per 11 C.F.R. § 102.5.

Before the second quarter of 2012, the Arizona Pipe Trades 469 PAC (the SSF) was a Qualified State and Local Political Organization. The SSF was registered with the State of Arizona as Committee Number 1227. In April 2012, the SSF registered as a federal committee, C00518191, and began to operate in accordance with 11 C.F.R. § 102.5(a)(1)(ii), accepting contributions subject to the prohibitions and limitations of the Federal Election Campaign Act of 1971 as amended ("the Act") and reporting all transactions to both the Arizona Secretary of State and the Federal Elections Commission. At the beginning of 2015, the SFF transitioned to

operating in accordance with 11 C.F.R. § 102.5(a)(1)(i), establishing a separate Federal account. This was done by terminating C00518191. Then several months later, the SSF established a separate account C00583344. At this time, the SSF continues to operate in accordance with 11 C.F.R. § 102.5(a)(1)(i), maintaining separate Federal and non-Federal accounts.

Since April 2012, the SSF contributed to state and federal candidate committees. The SSF retained Torres Consulting and Law Group, LLC, for government relations and public relations consulting as well. Each of these were proper expenditures, fully and properly disclosed to the appropriate regulating agency and furthering the stated purpose of the SSF.

The SSF is operated by the connected organization, United Association Local 469. Complainant Gilliam complains that the current Treasurer, Aaron Butler, took too much time to relieve the outgoing Treasurer, Phil McNally. He provides no citation to authority for this because there is none. Similarly, he expresses a concern about what fraction of the SSF's funds finance Federal and what portion finances non-Federal elections. The FEC simply does not regulate how the connected organization makes these choices for its fund. To the contrary, under the heading "Control of funds," the Commission's rules state explicitly that, "A corporation, membership organization, cooperative, corporation without capital stock, or labor organization may exercise control over its separate segregated fund." 11 C.F.R. § 114.5(d).

The complaint identifies one violation in relation to operating a fund that finances political activity in Federal and non-Federal elections. Prior to registering as a federal committee, while operating as a QSLPO, the SSF contributed \$500 to the Kirkpatrick campaign. When the SSF became aware that as a segregated fund, it did not need to cross the \$1000 threshold to be a federal PAC, *compare* 11 C.F.R. § 100.5(a) & (b), it immediately requested a refund from the Kirkpatrick campaign. The campaign complied, a report of the refund from the campaign and the corresponding SSF report are attached hereto as Exhibit 1. Thus, the SSF discovered the violation and remedied the violation over four years ago.

The above demonstrates that no action should be taken with regard to the operation of an organization financing political activity in Federal and non-Federal elections.

When soliciting funds for the separate segregated fund, United Association Local 469 provides the political purpose of the fund, informs members that contributions are voluntary and identifies contribution guidelines as suggestions in accordance with 11 C.F.R. § 114.5(a).

As quoted within the complaint, the solicitation notice provided to UA Local 469 members choosing whether to contribute to the SSF identifies the purpose of the fund as supporting state and federal candidates. That is exactly what the funds are used for. Furthermore, the notice specifically identifies the contributions as voluntary and identifies the 0.75% contribution

guideline as suggested by the membership. The solicitation notice meets the federal regulatory requirements.

The complaint also suggests that identifying non-contributors on a list posted in the union hall during union meetings amounts to coercion. The complaint cites MUR 5379 and MUR 4780 to support this claim. Under MUR 5379, the Commission determined that when a corporate officer tells corporate executives emailing other executives that a \$1000 contribution to a candidate is expected, that amounts to a corporation illegally facilitating a contribution to the candidate. MUR 4780 involved a similar allegation, although the Commission found no reason to believe there was a violation. The non-contributors list applies to contributions made to the SSF, not to a candidate. UA Local 469 does not employ its members. These MURs are not relevant to the coercion allegation.

The Commission considered a committee's use of a non-contributors list in MUR 5681. The Commission rejected the assertion that a non-contributors list amounted to coercion in that matter. For the same reasons, the Commission should reject that claim in the instant matter.

The Commission did conclude that the trade association in that case used the list in such a way that it must be treated as a solicitation. However, under the FEC's general counsel's report in MUR 5681, a non-contributors list published by itself is not a solicitation. First General Counsel's Report, MUR 5681, at 5 (*available at <http://eqs.fec.gov/eqsdocsMUR/00005ACE.pdf>*) ("In this matter, the publication of the names of non-contributing members likely was intended to put pressure on members to donate to RPAC, *although this activity, by itself, does not appear to constitute a violation of 2 USC § 441b(b)(3).*"(emphasis added)). Only when that list is paired with an ask does it become a solicitation. *Id.* at 5. ("Specifically, the newsletter solicited contributions to RPAC by listing the names of the non-contributing members *and* asking "Have you made your contribution?" (italics emphasis added).

Here, the non-contributors list was a standalone document that did not include any direct ask and the list was not included in the newsletter. Nor was the list a part of a presentation, rather it was posted in the union hall along with several other notices posted during the union meeting. Furthermore, members contribute by using the job form. Thus, if a non-contributor responded to the list by signing up for the SSF contribution, he or she would necessarily see the solicitation notice on the form. *Cf.* Dissent, MUR 5681, at 4 (*available at <http://eqs.fec.gov/eqsdocsMUR/00005C02.pdf>*).

It is Respondents' position that its posting of a non-contributors list is not a solicitation. Nonetheless, in an abundance of caution, the union has adopted a policy to add the solicitation notice to the non-contributors list. *See* Butler Declaration, Exhibit 2.

The above demonstrates that no action should be taken with regard to solicitations made by the SSF.

RESPONSE TO INDIVIDUAL ALLEGATIONS

General Allegations.

Starting at page 4, the complaint provides "general allegations." In the first seven paragraphs the complaint provide a generally accurate description of how the SSF operated as a separate segregated fund financing political activity in connection with Federal and non-Federal elections. In the final paragraph of page 4, the complaint notes that Phil McNally remained as the political committee Treasurer after he resigned as Business Manager. There is no requirement in the Act that the Business Manager be the PAC Treasurer, nor is the length of time for turnover regulated by the Commission. This is not a violation of the Act.

The complaint alleges at the top of page 5 that it is improper for the SSF to finance Federal and non-Federal elections. Under 11 C.F.R. § 102.5(a), this is allowed. Furthermore, the SSF informed its members, as required by 11 C.F.R. § 114.5(a), that SSF funds would support state and federal candidates. The only violation identified in subparagraphs a. through d. is the already refunded contribution to the Kirkpatrick campaign.

The next two paragraphs on page 5 relate to a newsletter article from the summer of 2011. Importantly, in the summer of 2011, the SSF was operating as a QSLPO and thus to the extent this newsletter article is a solicitation, it was not for a federal political committee.

As is noted in the challenged article, at that time the Arizona Legislature had passed Senate Bill 1365, which unlawfully burdened private union contributions to political committees. The impact of Senate Bill 1365 complicates the evaluation of these statements. As a federal court would note in the fall of 2011, "Plaintiffs and Plaintiff-Intervenors have shown a likelihood that they will succeed in demonstrating that [SB 1365's] exceptions render it underinclusive, and that it therefore discriminates according to viewpoint in violation of the First Amendment. The claims allege constitutional harms, which are necessarily irreparable." *United Food & Commercial Workers Local 99 v. Brewer*, 817 F. Supp. 2d 1118, 1128 (D. Ariz. 2011). However, at the time the 2011 newsletter was written, it was unclear how this law would impact the local. These unique circumstances, and the fact that the article was written five years ago by an individual who is no longer associated with the SSF, make it clear that there is no reason to take action based on this allegation.

In the last paragraph of page 5, the complaint notes that the dues check off is combined with the dispatch form. A combined check off is allowed as provided by Advisory Opinion 2006-17. The remainder of the allegations made in this section simply assert repeatedly that the check-off form is coercive. Respondents have already identified the fact that combined forms are allowed and that the check-off explicitly identifies contributions as voluntary. Members are required to sign the job form; they are not required to sign up for the PAC deduction, which is clear from the form itself.

Treasurer Phillip McNally

The first paragraph of this section, running from page 6 to 7, repeats the complaint of having a combined federal and state committee, authorized by 11 C.F.R. § 102.5(a), and using a combined check off form, authorized by AO 2006-17. On page 7, the complainant provides the solicitation notice, which states explicitly "I voluntarily authorize" the contribution to the SSF. Thus satisfying the voluntary requirement. It further explicitly identifies "0.75%" as a suggested contribution. Finally, it accurately identifies the SSF's purpose as promoting the local's values with state and federal politicians. Thus, the complaint itself identifies that the requirements are met. The allegations that these requirements are not met—despite being explicitly identified in the complaint—are repeated at the end of the section from page 8 to 9.

Beginning on page 8, the complaint suggests that complainant would prefer that the organization direct more funds to Federal elections and questions why his contributions do not show up on reports to the FEC. First, complainant's contributions during the period in which the SSF was dual reporting are found only on state reports because the total contributions from complainant did not cross the federal threshold for itemized reporting, but did cross the lower state threshold. As for the ratio of funds devoted to Federal elections, under 11 C.F.R. § 114.5(d), it is the connected organization that controls the operations of the SSF and appropriately determines to what extent the SSF will finance Federal and non-Federal elections.

Finally, the charge that Mr. McNally "willfully violated clearly established election campaign laws" is reckless and borders on defamatory. None of the allegations made against Mr. McNally require action to be taken, let alone provide a bases for an allegation of willful violation.

Treasurer Aaron Butler

There are no new allegations in this section, which runs from pages 9 to 11. The claims about the operation of the SSF are addressed above, as are the allegations against the combined form and solicitation notice. The claim that Mr. Butler willfully violated campaign finance law is equally reckless and entirely unsupported by the complaint. None of the allegations made against Mr. Butler require action to be taken, let alone provide a basis for an allegation of willful violation.

Non-contributors List

Under the headings "Illegal Monitoring by McNally and Butler Violation" and "Publication of the PAC Non-Contributors List," found on pages 11 to 14, the complaint alleges that the non-contributors list posted during union meetings amounts to coercion. As discussed above, the Commission has considered such an allegation before, MUR 5681, and concluded that such a list is not coercive. Respondents' position with regard to the non-contributors list is as stated above:

(1) it is not coercive, (2) in the context of a union hall, it is not a solicitation, but (3) in an abundance of caution, the solicitation notice will be added to the list.¹

Repeated Complaint – Financing Federal and non-Federal Elections

At pages 15 and 16, the complaint claims that it is “fraudulent” for the SSF operated by United Association Local 469 to finance both federal and state elections. As has been provided repeatedly in this response, and as is no doubt clear to the Commission, such operations are allowed and explicitly authorized under 11 C.F.R. § 102.5. Furthermore, as the connected organization may operate the fund, 11 C.F.R. § 114.5(d), it may determine to what extent the fund finances Federal and non-Federal elections.

Verbal Solicitation by Israel Torres

The complaint alleges at pages 16 through 17 that Israel Torres made “an illegal verbal solicitation during a members meeting.” Nonetheless, the complaint itself identifies Mr. Torres as providing the purpose of the PAC and identifying the act of supporting it as being voluntary. It appears that the solicitation notice provided by Mr. Torres complied with 11 C.F.R. § 114.5.

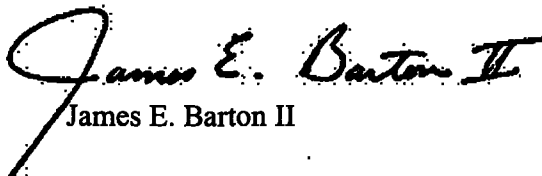
Use of a Consulting Firm

The complaint characterizes hiring a consulting firm as a “dark money scheme.” To the contrary, using a political consultant is an appropriate expenditure of a political committee. Torres Consulting & Law Group, LLC is a vendor of the SSF, not a recipient of contributions nor a political committee. The website provided by the complainant demonstrates exactly that. Furthermore, all payments to Torres Consulting & Law Group, LLC were properly reported to state and federal election regulators and to the Department of Labor.

CONCLUSION

Through this letter, Respondents have demonstrated that no action should be taken against them in this matter. Please contact me if any further information is required.

Yours,


James E. Barton II

¹ The section also inaccurately alleges that Israel Torres consented to publishing the list. In fact, the Torres Law Group was not involved in reviewing or publishing the list.

EXHIBIT 1

2012 Refund from the Kirkpatrick Campaign

1704443-0003

SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS

 Use separate schedule(s)
 for each category of the
 Detailed Summary Page

 FOR LINE NUMBER:
 (check only one)

PAGE 261 OF 261

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Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Kirkpatrick for Arizona

Full Name (Last, First, Middle Initial)

A. United Association Plumbers and Steam Fitters

Mailing Address 3109 N 24TH ST

City	State	Zip Code
Phoenix	AZ	85016

Purpose of Disbursement
Refund of Contribution

Candidate Name

United Association Plumbers and Steam Fitters

Category/
Type
 Office Sought: ☐ House
☐ Senate
☐ President

Disbursement For:

☐ Primary ☐ General
☐ Other (specify)

State: District:

Date of Disbursement

MM	DD	YY
01	19	2012

Amount of Each Disbursement this Period

500.00

Transaction ID : 20c-05-01091-02369

B.

Mailing Address

City	State	Zip Code
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Purpose of Disbursement

Candidate Name

Category/
Type
 Office Sought: ☐ House
☐ Senate
☐ President

Disbursement For:

☐ Primary ☐ General
☐ Other (specify)

State: District:

Date of Disbursement

MM	DD	YYYY
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Amount of Each Disbursement this Period

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Mailing Address

City	State	Zip Code
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Purpose of Disbursement

Candidate Name

Category/
Type
 Office Sought: ☐ House
☐ Senate
☐ President

Disbursement For:

☐ Primary ☐ General
☐ Other (specify)

State: District:

Date of Disbursement

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Amount of Each Disbursement this Period

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TOTAL This Period (last page this line number only).....

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SCHEDULE A (FEC Form 3X) **ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 3024 OF 3031

(check only one)

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Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Local Union No. 469 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. & Canada PAC (Arizona Pipe Trades Local 469 PAC)

Full Name (Last, First, Middle Initial)

A. Kirkpatrick For Arizona

Mailing Address PO Box 12011

City State Zip Code
 Casa Grande AZ 85130

FEC ID number of contributing
federal political committee.

C

Name of Employer

Occupation

Receipt For: 2012

☐ Primary ☒ General
☐ Other (specify) ▼

Aggregate Year-to-Date ▼

500.00

Date of Receipt

MM / DD / YYYY
 01 / 30 / 2012

Transaction ID : 3462024

Amount of Each Receipt this Period

500.00

[MEMO ITEM]

Prior Contribution

Full Name (Last, First, Middle Initial)

B. Mailing Address

City State Zip Code

FEC ID number of contributing
federal political committee.

C

Name of Employer

Occupation

Receipt For:

☐ Primary ☐ General
☐ Other (specify) ▼

Aggregate Year-to-Date ▼

Date of Receipt

MM / DD / YYYY

Amount of Each Receipt this Period

Full Name (Last, First, Middle Initial)

C. Mailing Address

City State Zip Code

FEC ID number of contributing
federal political committee.

C

Name of Employer

Occupation

Receipt For:

☐ Primary ☐ General
☐ Other (specify) ▼

Aggregate Year-to-Date ▼

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Amount of Each Receipt this Period

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EXHIBIT 2

Aaron Butler Declaration

17001-10444071

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